SECTION 12.

Mr. Subrahmanya Pillai moved that the word 'wilfully' be inserted between the words 'whoever' and 'disobeys' in line 1, and said :—

"I am in favour of introducing a saving clause in this Section, so that only persons who wilfully and without sufficient reason fail to obey the orders, should be punished. As I have already said on a former occasion, there are a number of ryots whose sole wealth in this world is a pair of bulls with a country cart, or two buffaloes with a country plough. When any of their animals becomes diseased, the ryots may have to defray the cost of transporting the animal to the hospital pound, perhaps a few miles away. They may not be in a position to defray the expenses in such cases. I think we should not make the law so very rigid as to bring them also under the Section. The object of my amendment is that, in the cases mentioned above, the owners concerned, who fail to obey the orders under unavoidable circumstances, should be shown some consideration."

The motion fell through for want of seconding.

Mr. Gopala Pillai then moved that the words 'Section 7 or Section 9' in line 2 of Section 12 be deleted, and said :—

"Section 7 relates to disinfection and Section 9 to destruction. My object in moving the amendment is that the Government should take up the work of disinfection without fixing the responsibility upon private individuals, so that the provision under Section 7 may not be imperative upon the ordinary subject. Materials for disinfection may not be available to all the people. I submit therefore that it should be taken up by the Department. As regards Section 9, I submit, the Department should carry out the destruction instead of compelling the owner to do it and then making his disobedience penal."

Seconded by Mr. Subrahmanya Pillai.

Mr. Krishna Aiyangar:—

"So far as Section 7 is concerned, it contains a direction in the matter of disinfection. Section 9 does not contain any direction at all. I believe that has found a place in the Section by mistake. The expression 'cause to be destroyed' does not mean that the owner should be asked to destroy the animal himself. I am for the omission of the words 'Section 9' alone.

Mr. Subba Aiyar :—

"The words 'Section 7' cannot be deleted. That Section contains directions to disinfect the premises, and if the owner disobeys the order, he will be liable to be punished. I think that the words 'or Section 9' may be deleted."

President :—

"I find, on a reference to the corresponding Section of the British Indian Act, that disobedience of directions with reference to disinfection is made punishable, but not disobedience to the directions with reference to destruction. The word 'Section 9' may, I think, be therefore deleted."

After some discussion, the council adopted the suggestion to delete the words 'Section 9' and to place the word 'or' before the words 'Section 7'.

SECTION 14—PARA 4.

Mr. Gopala Pillai moved that the words 'and wanting in good faith' be inserted after the word 'illegal' in line 1 of para 4 of Section 14.

Mr. Subba Aiyar accepted the amendment and it was carried.

The consideration of the Bill being over, Mr. Subba Aiyar moved that the Bill, as settled by the Council, be read again on a future day of which notice should be given.

Seconded by Mr. Mahadeva Aiyar.

Carried.

THE REVENUE RECOVERY REGULATION AMENDMENT BILL.

Mr. Subba Aiyar presented the report of the Select Committee on the Revenue Recovery Regulation Amendment Bill, and moved that the report and the Bill be taken up for consideration at once.

Seconded by Mr. Subrahmanya Aiyar.

Carried.

CLAUSE 4.

Mr. Govinda Menon moved that the words 'the lot is knocked down' be substituted for 'sunset on the day previous to that appointed for the sale' in the proposed Proviso to Section 33 of the Regulation, and said :—

"Sir,

My proposal is to leave the original Section 33 as it is. No reasons are urged for making the present change. I submit that it is an encroachment upon the rights of the individual already conferred upon him. According to the Civil Procedure Code, the debtor is allowed to deposit the amount up to the very last moment, *i. e.*, till the lot is knocked down, and, if once the lot is knocked down, the man will have to pay the amount plus 5 per cent. of the purchase

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money. This last provision is contained in Clause 5 of the Bill, but the right of payment till the lot is knocked down is taken away without apparently assigning any reasons for it."

Seconded by Mr. Gopala Pillai.

Mr. Subba Aiyar :--

"With reference to the sale of movable property, the existing provisions in the Regulation require the amount to be tendered prior to the date of sale. The same provision is introduced with reference to immovable property in order that there may not be any difference between the two cases. The amendment follows the Madras Revenue Recovery Act on which the Travancore Regulation is based. Further, the amendment is not likely to cause any hardship. We are introducing another Section, 33 A, by which the owner of the property or any person interested in it may deposit the amount within 30 days from the date of sale, thus giving an additional opportunity to have the sale set aside. There was some reason for introducing this provision, for, when the lot is knocked down, under the existing Regulation the owner could not pay the amount and get the sale set aside. The Dewan Peishkar may, if he is so inclined, set aside the sale. If he does not, the owner has no right to insist on his doing so. Further, the Tahsildar, who is to conduct the sale, is a circuiting officer, and it will be a matter of great convenience to him if the amount is deposited on the previous day, so that he may know previously whether there is to be a sale at all. Lastly, it will be in the interests of the defaulter himself to have as many bidders as possible on the auction day. If the amount is required to be deposited on the previous day, the intending bidders are likely to know whether a sale will or will not take place, and they may make arrangements accordingly. These, I believe, are the main objects of the amendment."

Mr. Parameswaran Pillai:—

"It has been said by my friend, Mr. Subba Aiyar, that by one of the amendments that are to come behind, the owner of the property proposed to be sold is to be given 30 days' time within which he may pay the dues with an addition of 5 per cent. of the purchase money, and that therefore not much hardship would be felt by the defaulter even if the time of payment was curtailed. It appears to me that the fact that we are providing for another 30 days in favour of the defaulter is an additional reason for not limiting the time to be allowed to him to deposit the money in the first instance. Supposing that the sale is to take place at 9 o' clock on a particular day, and the defaulter comes to the taluk office at 8-30 and offers the money to the Tahsildar, the Tahsildar cannot under the proposed amendment accept the money, and the sale will be conducted at 9 o' clock. At 10 'o clock, the purchaser gets 5 per cent. discount if the defaulter makes the payment under the next Clause. When the defaulter produces the money before the sale takes place, what is the necessity for going through the farce of a sale and paying the auction purchaser his purchase money with discount ? I cannot understand why, when we are giving further time to the defaulter to pay his dues, he must be asked to pay at the first instance before the evening of the day previous to the date of sale."

Mr. Krishna Aiyangar:—

"No doubt, the existing law on the subject with reference to attached movable property requires the tender to be made before sunset on the previous day. The only question now is whether, with reference to immovable property, the right which the defaulter has under the existing law to make the deposit before the lot is knocked down should be taken away, and whether there is any serious necessity to meet the requirements of the Revenue Department based on considerations of public policy. I submit no. The law does not invalidate payment made after sunset. According to the revised Proviso, if the payment is tendered before sunset of the previous day, the Revenue officer is bound to accept it and release the property from further process. It does not say that he has no discretion *after sunset* to accept the payment and release the property from attachment. It would be *obligatory* on the part of the Revenue officer to accept the amount, if paid *before* sunset, and *discretionary*, if payment be made *after* sunset. So, no useful purpose is served by making this distinction. The Section does not say that he *shall* proceed with the sale if payment is not made before sunset. Thus it is only discretionary with the officer either to accept the payment and release the attachment, or to proceed with the sale itself. In view of the right that is now conferred on the defaulter to get the sale set aside by giving him 30 days' grace, why should we propose to curtail his right by restricting such payment to sunset of the day preceding the date of sale? What is the special inconvenience to the Revenue officer in the matter of conducting sales if he does not get 12 or 18 hours' previous notice? In Courts, the practice is that money should be paid before the lot is knocked down. At any rate, in view of the proposal to extend this right subject to the disability of paying 5 per cent. extra on the purchase money, there is no justifiable necessity for curtailing the right. Merely for the sake of uniformity, we should not change existing rights. With regard to the argument that the Tahsildar is a circuiting officer, and that inconvenience will result if the money be not tendered sufficiently beforehand, I submit that the law requires him to conduct the sale at the time and place mentioned in the sale notice, subject to the condition contemplated in Section 32, and that there can therefore be no inconvenience to him. Thus, so far as practical convenience goes, there is not much to be said in favour of the position. From the standpoint of the ryot, Sir, in times like the present, when there is considerable distress in the country, one day need-not be cut off from the time which has been allowed till now for payment of the Government dues.

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More consideration seems to be shown for the feelings and conveniences of the intending purchasers and of the Tahsildar than for the substantial interests of the party whose property is proposed to be sold. As time progresses, I understand that the rights of the people are being *widened* and *not curtailed*. The Bill which was introduced in 1067 enabled the defaulter to pay the dues till the last moment, that is, till before the lot is knocked down. It is commonly understood that, in practice, the defaulter comes to know of the proposed sale only at a very late stage, probably very much later than the intending bidders. That means that greater consideration ought to be shown to the defaulter. No notice of the proposed sale is given to him as in the case of sales in Civil Courts. Some time before the proposed sale, a demand notice is served stating that, if money is not paid before a certain date, coercive process will be adopted. The notice of sale is published only in the Proverthy Cutcherry and on the property. All the same, as a matter of fact, the defaulter very often comes to know of it only when the Proverthicar goes to the property for holding the sale. With the short period available, the man has to run about, oftentimes in the outlying country, where money is not easily available in the shape of coin, and he may possibly not be in a position to find money before the lot is knocked down. Why should not the real and substantial grievances of the party be given greater consideration than the possible inconvenience that may be caused to the prospective bidder or the circuiting Tahsildar?"

President:—"I think that the amendment may be accepted."

After some discussion, Mr. Govinda Menon's amendment was adopted by the Council.

The Council adjourned for lunch at 2-30 P. M., and re-assembled at 3-15 P. M.

CLAUSE 5.

Mr. Gopala Pillai moved that the words 'the sum to be deposited in the treasury shall be fixed by the Tahsildar' be inserted after the words 'and may apply to the Division Peishkar to set aside the sale' at the end of Clause (1) of the proposed Section 33A, and said :—

"This Clause directs that the defaulter should deposit the arrears of revenue, the interest thereon, and the attachment and other expenses, along with a sum equal to 5 per cent. of the purchase money, before he makes an application under the Clause to set aside a sale. I beg to submit that it is not easy for every defaulter—a lay person—to know or to calculate the amounts which he has to deposit, and that therefore the responsibility for fixing the amount should not be placed on him. I may here bring to the notice of the Council the instance of a case in which the High Court recently held that the law did not cast any responsibility on the officer for fixing the amount. In that case, the party deposited the amount as per *Chalan* issued from the Court. The figure entered in the *Chalan* by the Court was wrong, and the party had to take the consequence of his application for setting aside the sale being rejected. If the responsibility is not placed on the officer, I think it will give rise to corruption in cases where extensive areas are sold in auction. The party will not be in a position to know what exactly are the amounts he has to pay under the several items mentioned in the Clause, and if by chance he makes a small mistake, the law deprives him of the concession granted to him by this Clause. On the other hand, if the Tahsildar is responsible for the figure, any mistake committed by him will relieve the party of his responsibility, and no harm will result. My proposal, while removing the impediments against the attainment of the object aimed at in the provision contained in the Clause, will, at the same time, in no way increase the difficulty in the recovery of the revenue".

Seconded by Mr. Govinda Menon.

Mr. Subba Aiyar :—

"There is no doubt some force in the argument of Mr. Gopala Pillai. With regard to the practice in Civil Courts, we find that the amount fixed in the sale proclamation has to be paid. There is no duty cast upon the Court to fix the amount at the time of deposit. It may be that the owner of the property may not be in a position to know exactly what amount he has to deposit. He may therefore find it difficult to fix the amount himself. I think that the figure may be fixed by the Tahsildar at the time of sale. To ask the Tahsildar to fix the amount at the time of deposit would in all probability lead to complications. The defaulter may apply on the last day when the Tahsildar may be in camp, and if there is delay in the deposit, the difficulty will be to decide who is responsible for the delay. The amendment as proposed cannot be accepted."

After some discussion, the Council adopted Mr. Subba Aiyar's suggestion that the words 'to be determined by the Tahsildar at the time of sale' be inserted after the word 'arrears' at the end of sub-clause (1) (*b*).

CLAUSE 9.

Mr. Govinda Menon moved that the whole of the para beginning with 'all moneys' and ending with 'agreement' be deleted, and spoke as follows :—

"Sir,

The provision contained in the Clause which I now move to be deleted is, in my opinion, a sweeping kind of legislation, and it is thoroughly uncalled for at this moment. The introduction of such a provision is justifiable only in cases of particular circumstances and not in a general way as is indicated by the Clause. This would necessarily affect materially many

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classes of people. For example, the tenants of the incorporated Devaswoms, against whom Government have hitherto had to file suits in Civil Courts for arrears of rent, are now affected by the introduction of this provision."

President :—

"With reference to this, I may say that, according to a recent amendment of the Religious Endowments Regulation, these arrears are recoverable as arrears of land revenue."

Mr. Govinda Menon :—

"Then, there is another class of people who are affected by this provision. They are the petty contractors in the P. W., Marahmat and other Departments. In some cases, these people have executed agreements which contain a clause to the effect that the amounts due from them may be recovered as arrears of revenue. Such agreements are taken only from petty contractors who are completely at the mercy of the Departmental officers. Most of these contractors are natives of this State ; and it is they that are chiefly affected by this provision of law. When settling accounts, the officers settle them in their own way and realise the amount summarily, and the party will be driven to go to the Civil Court and be put to a great deal of trouble and unnecessary expense. The question is whether the Government or the party should be asked to go to the Civil Court. In view of the fact that it is the petty contractors alone that will be forced to enter into agreements containing such a provision, and that it is they that would be in trouble, I think it unnecessary to introduce this provision of law. It may be that there will be considerable difficulty for the Government to realise small amounts from these contractors, but if these are to be realised through Civil Courts, the parties will certainly get justice. If, on the other hand, these amounts are to be realised by the summary process of the Revenue Department, in the majority of cases, the parties will not get justice done. The introduction of the Clause may be justifiable, as I said, only in particular circumstances but not in a sweeping kind of way. My friend will perhaps say that a similar provision exists in other countries. I am told that this provision is found in the Bombay Code. I understand that that is the only Province where this provision of law is to be found. Why should we select such a retrograde provision and incorporate it in our Statute Book ? When the other British Provinces have not cared to copy the Bombay Code, why should we do it and take away the existing right of the subject ? I do not think there is any absolute necessity for having such a general and comprehensive provision as the one in question."

Seconded by Mr. Gopala Pillai.

Mr. Subba Aiyar :—

"I beg to oppose the amendment. In the first place, agreements are entered into with Government or with heads of Departments on behalf of Government by contractors and other persons with their eyes open. They agree that any amount that may be found to be due from them may be recovered as arrears of land revenue. Now the question is whether the realisation of this amount could not be done through Civil Courts. A number of persons enter into agreements with various heads of Departments, and different sums are due from them. Is it desirable that in each case the Government should file a suit against each individual ? Will it not be enough if, in case of dispute, the party deposits the amount under protest and sues to recover the amount through Civil Courts, or sues to have the sale set aside if his property be sold in the meantime ? The remedy open to the party concerned to go to the Civil Court and to have the question of liability gone into is not at all taken away by the Section. The question is whether the Government or the party should go to a Civil Court for redress. The latter course is, I think, preferable. If the party disputes the amount that is claimed against him, the remedy is clearly open. I do not therefore see why an agreement entered into by the party should not be enforced. Such provision does exist in the British Indian enactments. It is also found in the existing Regulation, though the wording is rather vague."

The motion was put to the vote and lost.

Mr. Subba Aiyar moved that the word 'are' be substituted for 'is' in line 3 of the proposed Section 59.

Seconded by Mr. Chacko.

Carried.

Mr. Krishna Aiyangar moved that the word 'penalties' be substituted for 'liabilities' in line 4 of the same Section.

Mr. Subba Aiyar accepted the amendment and it was carried.

Mr. Subba Aiyar then moved that the Bill, as settled by the Council, be read again on a future day of which notice should be given.

Seconded by Mr. Mahadeva Aiyar.

Carried.

THE MOTOR VEHICLES REGULATION AMENDMENT BILL.

Mr. Subba Aiyar then presented the report of the Select Committee on the Motor Vehicles Regulation Amendment Bill, and moved that the report and the Bill be taken up for consideration at once.

Seconded by Mr. Raman Pillai.

Carried.

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